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May 19, 2017

BY ECF

Hon. Colleen McMahon
U.S. Chief District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Simran Services LLC et. al. V. Everest Foods Inc. et. al.
Civil Action No. 17-CV-02918 (McMahon, J.)(Ellis, M. J.)

Subject : Letter Motion Regarding Defendants request for Reconsideration of
Order Dated May 17, 2017

MEMO ENDORSED

Dear Hon. Judge McMahon:

This office represents defendant Everest Foods Inc., Raja Jhanjee and Vicky Vij in the captioned matter. I am writing this letter pursuant to your honors Individual Rule IV (F) (4) Motions for Reconsideration. Defendant's filed the present Removal Action on April 21, 2017 pursuant to 28 U.S.C §§§1441(a) 1446 and 1332 based on Diversity of Citizenship and Amount in Controversy.

On May 17, 2017 (ECF Document# 9) Honorable Court observed that removal to this court was erroneous and directed the Clerk of Court to transfer this case to the District of New Jersey besides cancelling the initial pretrial conference scheduled for June 16, 2017.

By means of this Letter Motion Defendant's respectfully requests the honorable Court to reconsider the Order of transfer dated May 17, 2017 on the following grounds and reasons:

1. Defendants believe this action is removable pursuant to the provisions of 28 U.S.C. §1441(a) because it is a civil action over which this Court has original jurisdiction under 28 U.S.C. §1332, in that there is complete diversity between the parties and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

Colleen McMahon

5/19/17
Counsel, you are just plain wrong. You cannot remove a federal case to a state court in a state where it was brought. The real statute

2. 28 U.S.C. §1332, (c) (1) provides- a corporation shall be deemed to be a citizen of every State and foreign state by which it has been incorporated and of the State or foreign state where it has its principal place of business, ...

3. Defendant Raja Jhanjee, is an individual Stockholder of 35 % shares of New York Corporation, Defendant Vicky Vij, is an individual Stockholder of 35 % shares of New York Corporation and Defendant Everest Foods Inc. is a New York Corporation; which is incorporated in the State of New York and has a principal place of business in the County and State of New York , now, and at the time the State Court Action was commenced were corporation organized and existing under the laws of the State of New York with its principal place of business in the State of New York and therefore is now, and at the time the State Court Action was commenced was, a citizen of the State of New York for diversity jurisdiction purposes. 28 U.S.C. §1332(c) (1).

4. In this regard, The Supreme Court has held that a court *must "conclusively (and artificially) presume that a corporation's shareholders were citizens of the State of Incorporation"*. *Hertz Corp. v Melinda Friend et al., 130 S. Ct.1181.* This presumption allows courts to consider a corporation to be citizen of the state of its incorporation. *Id.* (citing 13 F C Wright & Miller . Federal Practice and Procedure § 3623, pp 1-7)

5. Notably , all plaintiffs are citizens of State of New Jersey and defendants are citizens of State of New York . Accordingly, this matter has complete diversity of citizenship between plaintiff and defendant and the amount in controversy exceeds \$75000.00.

6. For this reason, the honorable court has subject matter jurisdiction based on diversity of citizenship and the amount in controversy exceed the sum or value of \$75,000, exclusive of interest and costs. 28 U.S.C. §1332(a).

Thank you for your honors attention to this manner.

/s/
Sanjay Chaubey, Esq. (SC-3241)
Attorney for the Defendant

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